

MF 02-8

Tax Type: Motor Fuel Use Tax

Issue: Failure To Have Motor Fuel Use Tax Decal/Permit

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	Docket No. 01-ST-0000
v.)	Acct # 00-00000
)	NTL # 00-00000000
JOHN DOE)	
ABC FARMS)	
Taxpayer)	

RECOMMENDATION FOR DISPOSITION

Appearances: Jim Day, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois.

Synopsis:

The Department of Revenue ("Department") issued a Notice of Tax Liability ("NTL") to John Doe/ABC Farms ("taxpayer") for motor fuel use tax. The NTL alleges that the taxpayer was operating a commercial motor vehicle in Illinois without a valid motor fuel use tax license. The taxpayer timely protested the NTL. The parties have filed a stipulation of facts and requested that this matter be decided based on their written submissions. Joe Blow, who is the owner of ABC Farms, filed the documents on behalf of the taxpayer. After reviewing the documentation presented, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The taxpayer is located in Anywhere, North Carolina. In August of 2001, the taxpayer drove a 1991 International Harvester truck to Iowa to pick up some farm equipment for use in the taxpayer's operations. (Stip. #1, 5, Ex. #1)

2. On August 29, 2001, the taxpayer was issued a citation for operating the truck in Illinois without displaying a valid motor fuel use tax license and decals, without a single-trip permit, and without an International Fuel Tax Agreement temporary permit. (Stip. #1, Ex. #2)

3. The truck had a valid North Carolina Highway Fuel Use Tax License. The truck has a registered gross vehicle weight of 52,000 pounds. (Stip. #1, 4, Ex. #7)

4. Upon receiving the citation on August 29, 2001, the taxpayer immediately purchased a single trip permit and completed its trip through Illinois. (Stip. #6)

5. On October 19, 2001, the Department issued an NTL to the taxpayer for motor fuel use tax showing a penalty due of \$1000 for failure to have a valid license while operating the vehicle on August 29, 2001. (Stip. #2, Ex. #3)

CONCLUSIONS OF LAW:

The NTL issued by the Department alleges that the taxpayer was found operating a commercial motor vehicle in Illinois without a valid motor fuel use tax license pursuant to section 13a.4 of the Motor Fuel Tax Act (Act) (35 ILCS 505/1 *et seq.*), which provides in part as follows:

"Except as provided in Section 13a.5 of this Act, no motor carrier shall operate in Illinois without first securing a motor fuel use tax license and decals from the Department or a motor fuel use tax license and decals issued under the International Fuel Tax Agreement by any member jurisdiction." (35 ILCS 505/13a.4).

Section 13a.5 provides an exception for motor carriers holding a single trip permit. (35 ILCS 505/13a.5). A "motor carrier" is defined as any person who operates a commercial motor vehicle in Illinois. (35 ILCS 505/1.17). The Act defines "commercial motor vehicle" as follows:

"[A] motor vehicle used, designed or maintained for the transportation of persons or property and either having 2 axles and a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds ***, or having 3 or more axles regardless of weight, or that is used in combination, when the weight of the combination exceeds 26,000 pounds ***, except for motor vehicles operated by this State or the United States, recreational vehicles, school buses, and commercial motor vehicles operated solely within this State for which all motor fuel is purchased within this State. ***" (35 ILCS 505/1.16).

Section 13a.4 of the Act also provides that the motor fuel use tax license shall be carried in the cab of each vehicle. (35 ILCS 505/13a.4). Section 13a.6 of the Act states that if a commercial motor vehicle is found operating in Illinois without registering and securing a valid motor fuel use tax license, then the person required to obtain a license or permit under Section 13a.4 or 13a.5 of the Act must pay a minimum of \$1,000 as a penalty. (35 ILCS 505/13a.6(b)).

Section 21 of the Act incorporates by reference section 5 of the Retailers' Occupation Tax Act (35 ILCS 120/1 *et seq.*), which provides that the Department's determination of the amount of tax owed is *prima facie* correct and *prima facie* evidence of the correctness of the amount of tax due. 35 ILCS 505/21; 120/5. Once the Department has established its *prima facie* case, the burden shifts to the taxpayer to prove by sufficient documentary evidence that the assessment is incorrect. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill.App.3d 203, 217 (1st Dist. 1991); Lakeland Construction Co., Inc. v. Department of Revenue, 62 Ill.App.3d 1036, 1039 (2nd Dist. 1978).

Before the taxpayer's driver left for the trip to Iowa, the taxpayer contacted the North Carolina Department of Motor Vehicles to determine whether there were any specific licensing requirements for the trip. The taxpayer was told that because he would be hauling for himself and not for hire, his current license was sufficient. The taxpayer states that he would have purchased the single trip permit for Illinois if he were instructed to do so. The taxpayer had no licensing problem in any of the other states during his trip. The taxpayer contends that because he was not correctly informed of the requirements, the penalty should not be imposed.

The taxpayer's circumstances are unfortunate but do not provide a basis for eliminating the penalty. The taxpayer clearly made a good faith effort to obtain the license and comply with the law prior to the issuance of the citation. Nevertheless, the Motor Fuel Tax Act does not contain a provision that allows the penalty to be abated based on the taxpayer's lack of knowledge of the law or the taxpayer's reasonable attempts to comply with the law. The Act simply requires the taxpayer to obtain the license prior to operating a commercial motor vehicle in Illinois, and the failure to do so requires imposition of the penalty. Because the taxpayer did not have an Illinois motor fuel use tax license, a single trip permit, or an International Fuel Tax Agreement license on the day that its employee was operating the truck in Illinois, the penalty must be upheld.

Recommendation:

For the foregoing reasons, it is recommended that the penalty be upheld.

Enter: May 17, 2002

Linda Olivero
Administrative Law Judge